

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT IN
AND FOR MARION COUNTY,
FLORIDA

CIVIL DIVISION
CASE NO.

Pursuant to Rule 9.100(f) Fla. R. App. P.

GEORGE HILL
Petitioner

vs.

MARION COUNTY,
a political sub-division
of the State of Florida,
Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioner, George Hill, hereby files this Petition for Writ of Certiorari, seeking the court's review of the final action taken by the Marion County Board of County Commissioners ("County Commission") approving Special Use Permit number 110509SU, applicant, James L. Moody, ("Moody Special Use Permit").

I. BASIS FOR INVOKING JURISDICTION OF THE COURT;STANDING

Petitioner invokes the jurisdiction of the court pursuant to Article V, Section 5(b), of the Constitution of the State of Florida; Rule 1.630, Fla. R. Civ. P., and Rules 9.030(c)(3) and 9.100(f), Fla. R. App P. Petitioner has "standing" to seek relief pursuant to Ch. 163.3215 Fl. Stat. (2010), in that Petitioner resides within the immediate area of the property which is the subject of the decision being appealed (Tab 12, Page 44) and Petitioner's rights as a property owner will be adversely affected by the decision being appealed.

II. NATURE OF RELIEF SOUGHT

Petitioner seeks the issuance of a Writ of Certiorari quashing the County Commissioners decision; remanding the matter to the County Commission and requiring the County Commission

to act forthwith in a manner which is consistent with the findings and rulings of this court and the laws of the State of Florida; and retaining jurisdiction to enter such orders as are necessary to enforce the findings and rulings of this court.

III. PROCEEDINGS BELOW AND FACTS RELIED UPON BY PETITIONER

On or about March 9, 2011, Lawrence and Anna Moody filed an application (Tab 1, pages 11 - 14) for a Special Use Permit (#110509SU) to permit what was ultimately described by Marion County Staff as a “production, transport, and distribution facility” on 5.7 acres of land located approximately 6.0 miles southeasterly of Salt Springs, Florida, within the Ocala National Forest. In accord with procedures established by the Marion County Land Use Code, Section 4.6 (Tab 2), the application was considered by the Marion County Zoning Commission at a public hearing held on April 25, 2011. Also in accord with Section 4.6 of the Marion County Land Development Code, the Marion County Planning Department prepared a written report concerning the application and submitted same to the Zoning Commission, and ultimately the Marion County Board of County Commissioners, (hereafter “BOCC”) for their consideration (Tab 1). Within the report, The Marion County Planning staff recommended approval of the Moody Special Use Permit.

The Marion County Zoning Commission, (hereafter “Zoning Commission”), considered the Special Use Permit at public hearing on April 25, 2011. Testimony at the hearing revealed that the use requested was as described within the Marion County Planning Department staff report (Tab 1) and can be summarized as follows:

Description of proposed use:

The Moody proposes to construct a well with an outside diameter of less than six (6) inches for the purpose of extracting up to 100,000 gallons of water per day from the site. The water would be loaded onto tanker trucks at the site and then transported off-site. The contemplated operation would require from 1-3 on-site employees working 6 days per calendar week from 5:00am until 6:00pm. Transporting the water from the site would require approximately 21 round-trip semi-truck trips per day with each truck transporting approximately 5,000 gallons of water (40,000 pounds). If allocated over the 13 hour operating day, the

frequency of truck trips would be approximately 1.62 per hour. Other improvements contemplated on-site would include a 600 foot looped gravel drive- way connecting the property to State Road 19; a 2310 square foot pole barn; two 10,000 gallon water storage tanks; a 120 square foot office and restroom with septic tank, drain field, and parking space.

At the conclusion of the public hearing held on April 25, 2011, the Zoning Commission voted by a 6 to 1 majority (Zoning Commission meeting minutes of April 25, 2011, attached as Tab 3) to disagree with staff's recommendation and to instead recommend that the Moody application for Special Use be DENIED upon the following findings of fact:

1. The use is not compatible with surrounding land uses.
2. The use would adversely affect the public interest.

Again in accord with the Marion County Land Development Code, the BOCC held a public hearing on May 31, 2011, for the purpose of considering the Zoning Commission's recommendation to deny the Moody Special Use Permit. At the conclusion of the hearing, the BOCC, voted unanimously to approve the Special Use Permit, thereby rejecting, ignoring, and/or overruling the recommendation of the Zoning Commission. A written resolution approving the Moody Special Use Permit, dated May 31, 2011, along with a written "Special Use Permit" dated June 9, 2011, were executed by the Chairman of the BOCC and the County's Zoning Manager, respectively (Tab 13). The decision of the BOCC, approving the Moody Special Use Permit is being "appealed" through this Petition for Writ of Certiorari.

In this Petition for Writ of Certiorari, Petitioner shows that a fundamental error occurred in the proceedings before the BOCC and urges this court to grant Petitioner's Writ of Certiorari. Simply put, the BOCC's approval of the Moody Special Use Permit departed from the essential requirements of law by failing to effectively apply the criteria for consideration of Special Use Permit applications as established within the Marion County Land Development Code, (hereafter "Development Code"). In addition, the BOCC's approval of the Moody Special Use Permit was not based upon substantial competent evidence.

The evidence and record below will show that the BOCC did not require the applicant to satisfy the requisite burden of demonstrating that the proposed use was consistent with the Comprehensive Plan. In addition, the evidence and record below will show a lack of competent

substantial evidence to support the BOCC's decision that the Moody application satisfied the 3 criteria established by the Development Code as a condition of the approval of any Special Use Permit. More specifically, of the 3 requisite criteria, the Moody did not demonstrate that the special use was:

1. Consistent with the Comprehensive Plan, and
2. Compatible with the land uses in the surrounding areas.

An appendix has been filed with this Petition that contains the following items (each of which will be cited "Tab [#] at [page # in lower right hand corner]"): Content submitted at the public hearings and otherwise made a part of the record during the proceedings below; transcript of a portion of the public hearing before the BOCC on May 31, 2011; various provisions of the Development Code ; various provisions of the Comprehensive Plan; and cited case law.

IV. SPECIAL USE PERMITS IN MARION COUNTY

A) Special Use Definition and Criteria for consideration

The Marion County Land Development Code at Section 2.2 (Tab 4, page 10), defines "Special Use" as follows:

"Special Use. A use that would not be appropriate generally or without restriction throughout the particular zoning classification but which, if controlled as to number, area, location, or compatibility with the surrounding area, would not adversely affect the public health, safety, and general welfare."

Ordinarily, a particular use of property may not be permitted as a "Special Use" unless the zoning ordinance under which an applicant is proceeding expressly permits and lists such use as a Special Use. STS Land Associates, L.P., et. al. v. The City of Hollywood, by the City Commission of the City ..., 585 So. 2nd 1170, (Fla. 4th DCA 1991). (Tab 5). The use sought by Moody is not listed as a permissible "Special Use" within the Marion County Code. However, Marion County Zoning staff advised the BOCC that Section 5.2 of the Development Code allowed any use not specifically "listed" within the Marion Development Code to be considered as a "Special Use". (Tab 6, page 1)

The criteria by which an application for Special Use Permit is to be considered are set forth at Section 4.6 of the Development Code (Tab 2, Page 1). The relevant language reads as follows:

“The Zoning Commission shall make recommendations on Special Use Permits to the Board of County Commissioners. The Commission may recommend granting a Special Use Permit with appropriate conditions and safeguards. The Commission may recommend a denial of Special Use Permits when the use requested is not compatible with existing uses in the surrounding area, or will adversely affect the public interest, or the proposed use is not consistent with the Comprehensive Plan.”

The Board of County Commissioners is under no obligation to approve a Special Use Permit unless and until the applicant meets their burden of demonstrating that the proposed use will not adversely affect the public interest, the proposed use is consistent with the Comprehensive Plan, and the proposed use is compatible with land uses in the surrounding area.”

As is noted in Section III above, the Zoning Commission considered the Moody application and, in accord with Section 4.6, recommended denial of the Special Use Permit upon the grounds that the use was not compatible with existing uses in the surrounding area and that it would adversely affect the public interest. (Tab 3). The BOCC then considered the recommendation of the Zoning Commission, and essentially the same evidence relied upon by the Zoning Commission in recommending denial of the Special Use Permit. However, the BOCC disregarded the recommendation of the Zoning Commission and approved the Moody Special Use Permit.

V. STANDARD OF CERTIORARI REVIEW

Citing previous decisions, the Florida Supreme Court, in the case of Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2nd 195, (Fla. 2003), (Tab 7), recited the general rules applicable to certiorari review of a decision such as the one at hand. The rule announced is summarized as follows:

“After a Zoning Board rules on an application for a Special Zoning exception, the parties may twice seek review in the court system. First, a party may seek certiorari review at the Circuit Court level, This review is a matter of right. The Circuit Court's “first-tier” review is 3-pronged. The Circuit Court must determine “(1) whether procedural due process is accorded, (2) whether the essential requirements of the law have been observed, and (3) whether the administrative findings and judgment are supported by competent and substantial evidence”. Miami-Dade County, ibid. at 198, 199.

VI. THE BOCC’S DECISION DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW

- A) As noted at Section IV, the Land Development Code, Section 4.6, (Tab 2, Page 1) requires an applicant seeking a Special Use Permit to meet the burden of demonstrating that:
- 1) The proposed use will not adversely affect the public interest
 - 2) The proposed use is consistent with the Comprehensive Plan, and
 - 3) The proposed use is compatible with land uses in the surrounding area.

The BOCC failed and refused to effectively apply the 2nd of the 3 criteria described above in its consideration of the Moody Special Use Application, and, by failing to apply the criteria established within the Development Code in approving the Moody Special Use Permit, the BOCC departed from the essential requirements of law.

- B) Argument. The property described within the Moody Special Use Application (hereafter “Moody property”), possesses a “Rural Land Use” designation under the Comprehensive Plan and is zoned “A-1”. (See Tab 1, Page 1). Policy 1.24B of the Future Land Use element of the Marion County Comprehensive Plan (Tab 8, Page 9) defines the Rural Land category as follows:

“Rural land – a land use category permitting a range of agricultural and/or agricultural related uses, and accommodating low density residential development at a maximum density of one (1) dwelling unit to ten (10) acres....”

As defined, the “Rural Land” category does not contemplate commercial or industrial uses. However, “specialized land uses” within the rural land category may be designated in accord with specific criteria described within the Comprehensive Plan, and limited commercial activity may then be permitted within these specialized land use categories. These “specialized land use categories” include “Rural Village” (Tab 8, Page 9), “Rural Town” (Tab 8, Page 9) and “Hamlets” (Tab 9, Page 2). There is nothing within the record to suggest that the Moody property has been designated as either “Rural Town”, “Rural Villages”, or “Hamlets”. Accordingly, the Comprehensive Plan’s general prohibition of commercial/industrial activity within the “Rural Land” use category applies to the Moody property.

Additional exceptions to the Comprehensive Plan’s general prohibition of commercial/industrial development within “Rural Land” are found within policy 3.8 (Tab 9, Page 9) and policy 3.10 (Tab 9, Page 10) of the Comprehensive Plan. However, the Moody site does not meet the criteria for commercial/industrial development found within either policy 3.8 or policy 3.10.

Policy 3.8 (Tab 9, Page 9) states as follows:

“In the rural land, compatible neighborhood commercial development outside rural villages, rural towns, and/or hamlets will be allowed in accordance with the requirements and intent of policy 3.19 regarding maximum size, intensity, type of use, location and performance criteria. The requirements for rural neighborhood commercial development to occur will be: locations adjacent to existing commercial development, or location at existing commercial nodes and/or intersections, or location within areas of population concentration within the rural areas. (emphasis added).”

There is nothing within the record to suggest that the Moody property is located adjacent to existing commercial development, located at an existing commercial node and/or intersection, or located within an area of population concentration within the rural area. In fact, staff specifically advised the County Commission that policy 3.8 was not applicable to the Moody site. (Tab 12, Page 76).

Policy 3.10 (Tab 9, Page 10) states as follows:

“Non -residential development and land uses, including commercial and industrial uses in the rural land, that are functionally related to rural and/or agricultural land uses may be located in the rural land by Special Use Permit. Functionally related rural and agricultural uses are those activities and development which occur in connection to farm/agricultural operations and/or provides services related to the production or marketing of agricultural products (e.g., blacksmith, saddler, farm equipment repair, and large animal veterinary services, transportation services solely related to the transport of horses and live stock, etc.). (emphasis added). The maximum floor area ratio for non-residential development shall be 0.35 for allowable commercial uses and 0.75 for allowable industrial uses. Land development regulations shall be adopted to insure that such development is necessary and complementary to the continued agricultural character of the area and does not constitute or encourage urban sprawl.

There is no evidence in the record to support the contention that the use sought by Moody occurs in connection to farm/agricultural operations and/or provides services related to the production or marketing of agricultural products. In fact, Marion County staff specifically advised the County Commission that policy 3.10 was not applicable to consideration of the Moody application because the use “is not functionally related to agricultural land use”. (Tab 12, Page 77)

In sum, the use sought by Moody and defined by staff as a production, transport, and distribution facility, cannot be realistically classified as anything but a commercial or industrial use. Commercial and industrial uses are generally not allowed within the rural land category as defined and described by the Comprehensive Plan. While narrow exceptions are created within the Comprehensive Plan to permit commercial and/or industrial uses within the rural land use category, there is nothing within the record to suggest that Moody or the Marion County Zoning staff ever contended that the proposed Moody use met the criteria of any of the limited exceptions, i.e. the Moody site was not asserted as a hamlet, rural village, or rural town; wasn't located in a fashion required by policy 3.8 so as to permit its consideration as a compatible neighborhood commercial development; and wasn't asserted as being functionally related to rural and/or agricultural

uses as defined by policy 3.10.

The Zoning Commission specifically found that the proposed Moody use was not consistent with the Marion County Comprehensive Plan. However, despite that the fact that opponents to the Moody application specifically cited the Comprehensive Plan provisions discussed above, the BOCC essentially ignored the Comprehensive Plan's general prohibitions against commercial/industrial development within the Rural Land category and found the Moody application to be consistent with the Comprehensive Plan. No explanation or finding was provided to justify the allowance of commercial/industrial activity within the Rural Land category, as is proposed by the Moody Application. Perhaps the only attempt to justify the assertion that the proposed use is consistent with the Comprehensive Plan is found within the Marion County Staff Report (Tab 1, page 12), within that page entitled "Finding of Fact for Lawrence and Anna Moody Production and Transportation of Mineral Water". At paragraph 5 it is stated as follows:

"The proposed use is compatible with land uses in the surrounding area in that loading and transporting water is no different from loading and transporting pulp-wood which is a common practice in this area. Loading and hauling citrus, sod, or produce is a common and permitted use on land zoned A-1."

The cited argument in support of compatibility with the Comprehensive Plan fails in many respects. First, the activity of loading and transporting pulp-wood is vastly different from the use sought by Moody. Loading and transporting pulp-wood is a "moving venture". As the wood is harvested from land it is loaded "on-site" and then transported from the site. However, once the wood has been harvested from a particular tract there is no continued loading or transportation activity at the harvest site. The Moody use will involve a fixed site of approximately 6 acres where 21 semi-trucks per day will come to be loaded and will then leave between the hours of 5:00 am and 6:00 pm, 6 days per week, 52 weeks per year, for the next 25 years (permit expires May 17, 2036, but is subject to renewal) (Tab 13, Page 2). It defies logic to compare the harvesting and transportation of pulp wood with the use proposed by Moody.

Similarly, the example cited by staff of "loading and hauling citrus or sod" provides no support for the contention that the Moody use is consistent with the Comprehensive Plan.

The cited paragraph contends that the practice of loading or hauling citrus or sod is a “common and permitted use on land zoned A-1 (emphasis added)”. The objection at issue is not a matter of zoning but is instead a matter of consistency with the Comprehensive Plan. With regard to consistency with the Comprehensive Plan, loading or hauling citrus or sod upon lands bearing the Rural Land Comprehensive Plan designation might very well fall within one of the commercial/industrial exceptions to the general prohibition against commercial/industrial activity within the Rural Land use category. As noted above, policy 3.10 specifically allows “activities and development which occur in connection to farm/agricultural operations”. The hauling of citrus, sod, or produce would seem to be an activity occurring in connection to a farm/agricultural operation. This activity bears little resemblance to the “production, transport, and distribution facilities” proposed by Moody.

With the exception of the assertion found within paragraph 5 of the “Findings of Fact...” referenced above, there is nothing within the record to support even the contention that the Moody use is consistent with those sections of the Marion County Comprehensive Plan highlighted above. Applicant failed to meet its burden of demonstrating compliance with the Comprehensive Plan and the Marion County Commission failed to require the applicant to meet this prong of the 3-pronged criteria for approval of a Special Use Permit.

THE MARION COUNTY COMMISSION DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE LAW.

VII. THE DECISION OF THE BOCC IS NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE.

As is noted above, the Development Code places the burden upon an applicant to demonstrate that an application for Special Use satisfies three specified criteria as a condition of BOCC approval. There is a lack of competent substantial evidence to support the BOCC’s apparent findings that the Moody application: 1) is consistent with the Comprehensive Plan; and, 2) is compatible with the existing uses in the surrounding area.

- A) **While the issue of compliance with the Comprehensive Plan was addressed within the preceding section (Section VI), Petitioner would reassert the issue of the Moody application's inconsistency with the Comprehensive Plan in support of its argument that there is a lack of competent substantial evidence to support the decision of the BOCC.** Stated differently, there is a lack of competent substantial evidence to support the BOCC's decision that the Moody Special Use Permit is consistent with the Comprehensive Plan's Policies and Objectives for the Rural Land Use Category of lands within the County, and more particularly, those policies and objectives which generally prohibit commercial and industrial development within the Rural Land Use Category. For purposes of this objection, Petitioner would adopt the argument set forth in Section VI above.
- B) **The BOCC'S finding that the Moody proposed use is compatible with land uses in the surrounding area is not supported by competent and substantial evidence.** While the Development Code does not contain a definition of "compatibility" of adjacent uses, the courts of Florida have held that in the absence of a definition within a code or ordinance, a word or term's "plain and ordinary meaning" may be applied. The concept was specifically applied in defining the word "compatible" in the context of a land use case by the Florida Fifth District Court of Appeal in the case of Life Concepts, Inc. v. Harden, 562 So. 2nd 726, (Fla. 5th DCA 1990). (Tab 10). Relying upon the American Heritage Dictionary (Second College Edition 1985), the court defined the word compatible as "capable of living or performing in harmonious, agreeable, or congenial combination with another or others", or, capable of existing or living together in harmony, or, able to exist together with something else". Life Concepts, Inc., ibid. at 728.

Recalling that the use proposed by Moody is described within the Special Use Permit as a "production, transport, and distribution facility" and that its intensity could not support its description as anything but a commercial/industrial use, the question of compatibility with surrounding land uses obviously requires an examination of the land surrounding the Moody site.

Staff provided the BOCC a map depicting the Moody site as well as the land surrounding same. (Tab 1, page 10). The map reveals that the land to the North, West, and South of the

Moody site is zoned “A-1” (agricultural), while the land to the South of the Eastern portion of the Moody site is zoned “R-1” (residential). Of particular note is the fact that there is no property which is even visible within the scale of the map which possesses an industrial or commercial zoning classification.

Similarly, a second map provided the BOCC by staff (Tab 1, page 7) reveals existing land use designation surrounding the Moody site. This map reveals that property to the North and South of the Moody site is owned by the US Government Forest Service. Land to the East of the Moody site is described as “vacant”, and land to the South of the Eastern portion of the Moody site is developed in a residential fashion. It should again be emphasized that no commercial or industrial property is visible on this “second” map.

Staff's verbal description of the property surrounding the site is found within the staff report (Tab 1, page 3) and is as follows:

“The site is located within the Lake George environmentally sensitive overlay zone and is required to meet the additional setback, storm water, and water and sewage disposal system requirements in the Land Development Code. Additionally, the Eastern ½ of the site is located within an AE flood zone per FEMA FIRM with significant wetland areas. Any improvements within these areas will require additional review by FDEP and SJRWMD.

The area surrounding the subject property is designated Rural Land on the Comprehensive Plan Future Land Use Map and zoned A-1. Agricultural development in the area is limited, (emphasis added), primarily due to the proximity to Lake George and the large percentage of US Forest Service owned lands. The subject property is bordered by the Ocala National Forest the North and South. Existing agricultural uses include several logging operations both inside and outside the US Forest Service land holdings. Two developed camp sites including the Lake George Camp Sites and the Bill's Branch Camp Sites are located to the South and West, respectively and have experienced scattered development (emphasis added).” .

The competent and substantial evidence in the record suggest that the Moody site is surrounded by property that is either vacant, natural forest, utilized by the Forest Service

for camping purposes, and/or utilized for residential purposes. **None of these uses is capable of living or performing in harmonious, agreeable, or congenial combination with a production, transport, and distribution facility, which receives and dispatches 21 semi-trailer trucks per day, to be loaded on site with 40,000 pounds of water each, at a rate of 1.62 trucks per hour between the hours of 5:00 am and 6:00 pm, 6 days per week, 52 weeks per year for twenty-five years.**

Stated differently, it can be argued that “compatibility” is really an examination of impacts upon surrounding lands. Will an intense “proposed use” negatively impact the lands which surround it? Little, if any competent evidence was presented to the BOCC demonstrating that the intense Moody proposed use would not occasion an adverse impact upon adjacent lands. The Land Development Code places the burden upon the applicant to “demonstrate” that the criteria of compatibility is met. The record is virtually void of any competent substantial evidence which even could have been interpreted as demonstrating compatibility of the Moody use with the uses of lands surrounding the Moody site.

During the applicant's presentation, applicant presented a “Power Point” display (Tab 11), which included maps depicting area zoning and area development. One of the maps (Tab 11, page 3) depicts a much larger area to the South of the Moody site than is depicted within the map included within the staff report. (Tab 1, page 10). This larger scale map in fact discloses the existence of three parcels of commercially zoned property some distance South of the Moody site, separated from the Moody site by residentially zoned property. However, in testimony, applicant's representative (Lauren Moody) testified that the commercially zoned property (B-2) located closest to the Moody site (Tab 12, page 14) had been in existence since 1951, meaning that the use pre-dated adoption of the Comprehensive Plan and Development Code. In addition, while the zoning map presented by the applicant (Tab 11, Page 3) may reveal commercially zoned property within the larger scale view provided by the map, the aerial photographs provided by the applicant (Tab 11, page 2, tab 11, page 9, tab 11, page 10) do not reveal the actual existence of any significant commercial development. Instead, they reveal a landscape that is overwhelmingly undeveloped, in a natural state, or developed with

relatively low lot-coverage residential housing.

Applicant referenced commercial development in the Salt Springs area (see Salt Springs area zoning map, Tab 11, page 4) and a Florida Gas Transmission Plant (Tab 11, page 7) in arguing compatibility with surrounding land uses (Tab 12, Page 15). However, applicant's area overview map (Tab 11, Page 5), reveals that the Salt Springs commercial zoning is approximately 6 miles from the Moody site, while the Florida Gas Plant is approximately 12 miles from the Moody site “as the crow flies”. Neither the Salt Springs commercial zoning, or the Florida Gas Transmission Plant can even conceivably be argued as being close enough in geographical proximity to the Moody site to permit their classification as being within the “surrounding area” as would be required for demonstration of compatibility by the Development Code.

In sum, the Moody use will constitute the proverbial “hole in the doughnut”. It will be an intense commercial/industrial use surrounded by land which is utilized in the least intense manner imaginable. It is difficult to imagine that an applicant proposing such a use would be able to demonstrate compatibility with surrounding land uses which are so different in character to the use proposed. However, whether an applicant could demonstrate such compatibility is not the relevant question to this review. Instead, the relevant question is whether the applicant demonstrated such compatibility by substantial competent evidence and the answer to this question is a resounding NO!

THE BOCC’S REQUIRED FINDING THAT THE MOODY SPECIAL USE IS COMPATIBLE WITH USES OF THE SURROUNDING PROPERTY IS NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE.

CONCLUSION

The decision of the BOCC in approving the Moody Special Use Permit defied the recommendation of the Zoning Commission which had based its decision upon a finding that the Moody Special Use Permit was not compatible with surrounding land uses, and, that it would adversely impact the public's interest. The BOCC's decision departed from the essential requirements of law in that the BOCC did not effectively apply the criteria established within its

own development code in considering the Moody application. More specifically, the BOCC ignored specific provisions of the County's Comprehensive Plan which were in direct conflict with the Moody Special Use Application. In addition, the BOCC's decision is not based upon competent substantial evidence supporting the premise that the Moody use is consistent with land uses in the surrounding area. Thus of the three criteria required for approval of a Special Use Permit in Marion County, the record does not support the contention that Moody met its burden of demonstrating satisfaction of two.

WHEREFORE, Petitioner requests this Court to: Issue a Writ of Certiorari quashing the County Commission's decision to approve the Moody Special Use Permit; remand the matter to the County Commission and require the County Commission to act forthwith in a manner consistent with the findings and ruling of this Court and the laws of the State of Florida; and to retain jurisdiction to enter such orders as are necessary to enforce the findings and rulings of this Court.

DATED this 30th day of June, 2011

CERTIFICATE OF COMPLIANCE

Counsel hereby certifies compliance with Rule 9.100(1) Fla. R. of App. P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by hand delivery on the 30th day of June, 2011, to Matthew Minter, County Attorney, Marion County, 601 SE 25th Ave., Ocala, FL 34471; The Honorable Stan McClain, County Commission Chairperson, County Commissioner's Office, 601 SE 25th Ave., Ocala, FL 34471.

DONALD E. HOLMES, P.A.

Donald E. Holmes, Esquire
222 North Third Street
Palatka, FL 32177
(386) 328-1111
Fla. Bar No. 0219169
Attorney for Petitioner